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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Building The Wireless Future

CTIA
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

June 1, 1994

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: Ex Parte Filing - GEN Docket No. 90-314
Personal Communications Services

Dear Mr. Caton:

On Wednesday, June 1, 1994, the Cellular Telecommunications Industry Association ("CTIA") sent the attached letter, and White Paper entitled *Parity and the Mobile Communications Market: Equity, Eligibility and The FCC's Rules*, to the FCC staff listed below.

Rosalind Allan
Beverly Baker
Lauren Belvin
Kelly Cameron
John Cimko
Bruce Franca
Ralph Haller
Michael Katz
Julia Kogan
Blair Levin
Byron Marchant
Ruth Milkman
Susan Ness
James Quello
David Siddall
Gerald Vaughan
Richard Welch
Rudy Baca
Andrew Barrett
Karen Brinkmann
Rachelle B. Chong
Rodney Small
Donald Gips
Reed Hundt
Bill Kennard
Evan Kwerel
Jane E. Mago
Steve Markendorff
Tom Mooring
Dr. Robert Pepper
Greg Rosston
Dr. Tom Stanley
Gregory J. Vogt

If there are any questions in this regard, please contact the undersigned.

Sincerely,

Robert F. Roche

Enclosure

No. of Copies rec'd 0+1
List ABCDE

Building The Wireless Future

CTIA
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

June 1, 1994

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W. Room 802
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Commissioner Quello:

I was appalled to read PCS Action's May 27th letter to the Commission, and to hear of Time Warner's proposal to impose a virtual ban on cellular participation in PCS.

The "cellular eligibility proscription" offered by PCS Action, and the "fig leaf" proposal of a five percent overlap cap advanced by Time Warner, are fundamentally anticompetitive -- and completely at odds with the Commission's and Congress' PCS objectives and mandates.

Having apparently secured large spectrum blocks and large service areas for PCS licenses, Time Warner and PCS Action are "piling on" in an effort to close the door altogether on competition in the wireless marketplace. Separately and together, their proposals would effectively foreclose competition in bidding for PCS licenses, and in the subsequent PCS service market.

If Time Warner and PCS Action are successful, regardless of the number of licenses being auctioned -- both the consumer and the Treasury will lose.

PCS Action's members will have secured both the pioneer awards and carved out a singular product market, characterized by broad geographic areas, a permanent capacity advantage, and secure barriers to entry.

In addition, PCS Action is also trying to rewrite history by explaining away American Personal Communications' proposal that the attribution and overlap rules be relaxed in order to foster cellular eligibility for MTA licenses. In order to garner support for the large MTA markets, American Personal Communications advanced its proposal that the overlap be raised to 20 or 25 percent in order to promote cellular eligibility for *MTA* licenses.

Throughout this entire proceeding the cellular industry has recognized that new competition is the order of the day. We have not attempted to thwart such competition. Now, at the 11th hour come those new competitors with a proposal that they be protected from competition in the new spectrum.

Attached is a White Paper, *Parity and the Mobile Communications Market: Equity, Eligibility and The FCC's Rules,* which addresses the substance of Time Warner's and PCS Action's proposals, demonstrating that their proposals constitute nothing more than efforts to cripple competition in the PCS auctions and PCS service markets.

In order to realize the Commission's PCS objectives, and comply with Congressional mandates, the Commission must reject these proposals.

The key to realizing the general objective of a dynamic, competitive and innovative PCS marketplace, is parity in entry and participation. Providers should be free to bid for, and aggregate or disaggregate spectrum blocks to match resources with their plans, thereby optimizing spectrum use and putting in motion forces which will drive competition and innovation in PCS services. Moreover, to the extent that a spectrum cap is adopted, it should be applied equitably across licensees -- without regard to the nature of their services.

Very truly yours,

Thomas E. Wheeler

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Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

Dr. Robert Pepper
Chief, Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W. - Room 822
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Dr. Pepper:

I was appalled to read PCS Action's May 27th letter to the Commission, and to hear of Time Warner's proposal to impose a virtual ban on cellular participation in PCS.

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Suite 200
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202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

Dr. Thomas Stanley
Chief Engineer
Federal Communications Commission
2025 M Street, N.W. - Room 7002
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Dr. Stanley:

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Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

Mr. Ralph Haller
Chief, Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 5002
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Mr. Haller:

I was appalled to read PCS Action's May 27th letter to the Commission, and to hear of Time Warner's proposal to impose a virtual ban on cellular participation in PCS.

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Thomas E. Wheeler
President / CEO

June 1, 1994

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W. Room 832
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Commissioner Ness:

I was appalled to read PCS Action's May 27th letter to the Commission, and to hear of Time Warner's proposal to impose a virtual ban on cellular participation in PCS.

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Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

June 1, 1994

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W. Room 844
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Commissioner Chong:

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202-331-8112 Fax
202-736-3213 Direct Dial

Thomas E. Wheeler
President / CEO

Mr. Donald Gips
Deputy Chief, Office of Plans & Policy
Federal Communications Commission
1919 M Street, N.W. - Room 822
Washington, D.C. 20554

Re: Ex Parte Filing
GEN Docket No. 90-314
Personal Communications Services

Dear Mr. Gips:

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Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

PCS WHITE PAPER No. 6
Second Series

Parity and the Mobile Communications Market:

Equity, Eligibility and The FCC's Rules

June 1, 1994

Parity and the Mobile Communications Market: Equity, Eligibility and The FCC's Rules

Overview

This White Paper responds to recent proposals by PCS Action and Time Warner urging the effective exclusion of cellular companies from eligibility for Personal Communications Services (PCS) licenses. The proposals are, in fact, meritless, anticompetitive, and at odds with the Commission's PCS objectives.

Rather than adopting PCS Action's and Time Warner's proposals, the Commission should adopt *higher* population overlap and ownership attribution standards in order to foster participation in the wireless marketplace -- and thereby realize its PCS objectives.

- **The Commission's current population overlap and ownership attribution rules are unnecessarily restrictive, and are fundamentally arbitrary and capricious (p.1).**

- **Time Warner's more restrictive overlap proposal is unconscionably anticompetitive, serving only to protect their own multimedia market dominance (p.4).**

- **The proposals to exclude cellular -- including PCS Action's proposed cellular-PCS relationship prohibition and cellular-specific spectrum cap -- constitute gross and arbitrary restraints upon competition, threatening to produce inefficient competitors and spectrum warehousing (p.6).**

- **Time Warner's proposed geographic megamarkets and enormous spectrum blocks and PCS Action's disaggregation prohibition can only cripple competition, wasting scarce (and valuable) resources (p.7).**

- **Higher population overlap and ownership rules, realistic building blocks, and a *common* spectrum cap for *all* PCS licensees are necessary to establish parity in the new mobile communications market (p.11).**

The Current Overlap/Attribution Rules Are Too Restrictive

The Commission's current two-step attribution rule:

(1) Converts any entity (including individual investors) with 20 percent or more equity ownership into a "cellular carrier" and equates that 20 percent to 100 percent ownership, *and*

(2) Restricts such a "cellular carrier" to less than 10 percent of the pops in a market in order to be eligible for Major Trading Area (MTA)-sized licenses.

These tests are unduly restrictive; the *effective control* of only two percent of the pops in an MTA (20 percent x 10 percent) could preclude a bid on that entire MTA. What is more, since small companies and small investors tend to own small pieces of licenses (while big companies tend to own bigger amounts) such a rule falls hardest on entrepreneurs.

In fact, *some 1,561 opportunities for such "cellular companies" to fully participate in providing PCS are restricted by the FCC's 10 percent overlap rule in the PCS Basic Trading Areas* (the "BTAs" are also subject to the 10 percent overlap rule), even using the financial community's more realistic proportionate attribution standard.[1] But over 640 of these opportunities will be opened up by adopting a 40 percent overlap standard.

Companies Excluded from BTA Opportunities
By Overlap Percentage Baskets

10-19.9 %	20-24.9 %	25-29.9 %	30-34.9 %	35-40 %	40+ %
299	126	75	74	72	915

Total Opportunities Constrained = 1,561
Total Opportunities Constrained between 10 and 40 % = 646

CTIA and many other petitioners have demonstrated that these restrictions are both onerous and unnecessarily restrictive, arbitrarily constraining passive investors, minority partners, as well as wholly-owned and majority partners -- all without regard to the actual inability of such cellular companies and investors to exercise "undue market power."[2]

As the Charles River Associates' antitrust analysis indicated, ***there is no more reason to attribute "undue market power" to companies with geographic overlaps of 10 to 40 percent, than there is to attribute it to companies with geographic overlaps of under 10 percent.*** The selected overlap number is an arbitrary figure, with no substantive basis for its selection.

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[1]The financial community measures attributable ownership by performing the following calculation: Percentage Ownership x Number of Pops = Attributable or "owned" Pops.

[2]*See e.g.*, the Petitions for Reconsideration (PFRs) of CTIA, the Organization for the Protection and Advancement of Small Telephone Companies, Florida Cellular RSA Limited Partnership, the Rural Cellular Association, Point Communications, Radiofone, McCaw Cellular, and Sprint Cellular -- all of which have argued for the modification or elimination of the cellular eligibility restriction.

Moreover, the Commission's analysis incorrectly assumes that BTAs are relevant markets. As Charles River Associates noted, calculating market shares for firms in areas which are not relevant markets has no economic significance -- they do not provide a measure of market power.[3] In fact, raising the population overlap cap to 40 percent, and the ownership attribution threshold to 30-35 percent, poses no threat to competition.[4]

The Commission's current overlap and attribution rules function in such an irrational way as to restrain companies and investors with *no* ability to exercise market power -- such as an investor with a 20 percent ownership interest in a company with a 10 percent overlap -- while permitting companies with 100 percent ownership and nine percent overlap free reign.

As PCS Action itself notes, in an otherwise egregiously flawed filing, the Commission's attribution rules would permit an entity with 19.9 percent ownership to bid as it if were not an owner at all -- while limiting an entity with 20 percent. (However, PCS Actions's remaining analysis hopelessly confuses the separate PCS consortium ownership and cellular ownership rules -- placing an interpretation on the application of the former which entirely ignores the rationale for the existence of the 20 percent and 10 percent ownership and overlap rules.)[5]

PCS Action also misrepresents American Personal Communications' September 17, 1992, proposal that the Commission adopt a multiplier principle to calculate attributable pops. PCS Action tries to retroactively explain that the proposal was intended to "substitute" for a 10 MHz set-aside -- something contradicted by the clear language and the specific examples provided by Wayne Schelle's letter.

As Mr. Schelle explained, "if the entity in question owned 25 percent of a cellular system which served 36 percent of the population of the PCS licensing area, it would be attributed with a 9 percent interest (25% x 36%) and then would be eligible to apply for a PCS license for that area."[6] As he noted, this proposal would permit 18 out of 20 cellular licensees to apply for the PCS license to serve the

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[3] *See* CTIA's PFR in GEN Docket No. 90-314, filed December 8, 1993, at 14-24, and Charles River Associates' Antitrust Analysis attached thereto. *See also* PCS White Paper No. 3, Second Series, *PCS Rules Too Restrictive on Cellular, Study Finds: Antitrust Measurements Show Restrictions Not Necessary to Promote Competition*, February 4, 1994.

[4] *Id.*

[5] *See* Letter from Ronald Plesser, PCS Action, to William Caton, Secretary, FCC, dated May 27, 1994, at p.2.

[6] *See* Letter from Wayne N. Schelle, American Personal Communications, to FCC Chairman Alfred C. Sikes, dated September 17, 1992, GEN Docket No. 90-314, at p.2.

Baltimore/Washington MTA.[7]

Indeed, American Personal Communications subsequently filed an analysis demonstrating the additional MTA opportunities provided by raising the threshold to "permit cellular companies to hold PCS licenses in PCS service areas where their cellular licenses represent less than 20 percent of the population" -- admitting its willingness to consider a 25 percent threshold as well.[8]

If, as winners of pioneer preferences, or as aspirants for the remaining -- and hopefully (from their viewpoint) even larger megamarket licenses -- PCS Action and its members wish to narrow some of their members' previously more generous proposals, that is their privilege. But that does not change the fact that the views which they now propose are grossly anticompetitive.

Time Warner's Five Percent Overlap Standard Is Anticompetitive

The Commission's own overly-restrictive attribution and overlap rules are insufficiently restrictive to satisfy some PCS aspirants.

Time Warner recently advanced a proposal that a *five percent* overlap cap apply to cellular and PCS markets. It is a fig leaf to describe such an proposal as an "eligibility" rule -- it is a barrier to entry.

A five percent overlap cap effectively excludes all cellular carriers (and their investors) from bidding on in-region MTA and BTA licenses. The few still eligible to bid would either be so remote from their home regions as to be deprived of all of the efficiencies which the FCC praised in the *Second Report and Order*, or too small to compete against Time Warner for licenses.[9]

Given Time Warner's relentless denigration of the viability of small companies, small blocks, and smaller geographic markets, *it should be a matter for deep suspicion that Time Warner has advanced a proposal so blatantly tailored to reduce entry opportunities for those with experience in making the most of such assets -- cellular carriers and entrepreneurs who have demonstrated their faith in the utility of smaller*

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[7] *Id.* at p.4.

[8] *See* Letter from Anne V. Phillips, American Personal Communications, to Gerald P. Vaughn, FCC, dated July 8, 1993, GEN Docket No. 314 at p.1.

[9] The FCC has already found that cellular companies can help speed the deployment of PCS by "taking advantage of cellular providers' expertise, economies of scope between PCS and cellular service, and existing infrastructures." *See* both the study by David Reed, of the FCC's Office of Plans and Policy, "Putting It All Together: The Cost Structure of Personal Communications Services," and the *Second Report and Order*, 8 FCC Rcd. 7700 at para.24 (1993).

blocks (such as 25 MHz of cellular spectrum) and smaller markets (such as MSAs and RSAs).

On a BTA basis, adopting the Time Warner proposal would dramatically increase the exclusion of cellular companies and investors from the PCS marketplace. *It is important to note that under Time Warner's proposal of a five percent overlap (down from the Commission's original 10 percent),* ***518 additional bidding opportunities for companies with population overlaps of 5 to 9.9 percent would be foreclosed.***

Combining these opportunities with the opportunities already foreclosed by the Commission's 10 percent attribution rule would mean that ***cellular carriers would be foreclosed from 2,079 BTA opportunities*** *(518 + 1,561 = 2,079).*

On an MTA basis, at least for large and mid-sized cellular companies, practically any presence would result in exclusion. Thus, at a minimum, the following MTA exclusions would occur:

Alltel Mobile from 14 MTAs
Bell Atlantic Mobile from eight MTAs
Cellular Communications from four MTAs
Celutel from three MTAs
Century Cellular from seven MTAs
Contel from 25 MTAs
GTE Mobilnet from 28 MTAs
McCaw Cellular from 31 MTAs

SWB Mobile from 11 MTAs
Sprint/Centel from 19 MTAs
U S WEST Cellular from 11 MTAs

Ameritech from 10 MTAs
BellSouth from 18 MTAs
C.I.S. from three MTAs
Centennial Cellular from six MTAs
CommNet Cellular from six MTAs
Crowley Cellular from three MTAs
Independent Cellular from four MTAs
Palmer Communications from four MTAs
SNET Cellular from 2 MTAs
U.S. Cellular from 26 MTAs
Vanguard Cellular from five MTAs

Yet Time Warner's "fig leaf" proposal is matched in its arbitrary and unconscionably restrictive character by the naked PCS Action proposal that "the eligibility restrictions should be clarified to prohibit all relationships between in-region cellular and PCS other than carrier-user relationships."[10] Indeed, PCS Action refers to the eligibility rules as a *"cellular eligibility* ***proscription***."[11] As such, the Time Warner and PCS Action proposals are part and parcel with MCI, Cox and American Personal Communications' efforts to limit their competitor's access to spectrum -- an intent which they project upon cellular.

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[10]See Letter from Ronald Plesser, PCS Action, to William F. Caton, Secretary, FCC, dated May 27, 1994, at p.2.

[11]*Id.* (emphasis supplied).

The Cellular Exclusion Proposals Are Inequitable And Anticompetitive

If they are successful in eliminating cellular carriers from bidding on spectrum in their service areas, Time Warner will have eliminated the single biggest potential competitor for spectrum in their market areas.

- ***In Orlando Time Warner has a commanding presence -- 200,000 multimedia cable subscribers versus GTE's 20,000 cellular subscribers and McCaw's 23,000 cellular subscribers***

If cellular carriers GTE and McCaw are eliminated from the Orlando PCS market, Time Warner will be the only bidder able to utilize existing infrastructure.

Time Warner's draconian standard would both (1) lower the amounts Time Warner needs to bid in the auction by eliminating most of its potential rivals for the PCS licenses, and (2) effectively insulate the winning bidder from competition in the PCS market. As such, the proposal is completely incompatible with the Commission's PCS objectives and with the Congressional mandates to foster competition, diversity of providers, and technical innovation. Furthermore, by limiting bidding, this proposal will rob the public purse of auction revenues.

In fact, *Time Warner is a poor candidate to claim to be at competitive disadvantage in the PCS market.* ***Time Warner is,*** *as Lex Felker stated at the recent PCS En Banc Roundtable,* ***the largest media company in the world.***[12] Last year, Time Warner had over $ 6.5 billion in sales.[13]

And even as Time Warner's representatives advocate competitive restrictions in the PCS marketplace, Time Warner Chairman Gerald Levin has simultaneously announced that he is not worried about competition from telephone companies in their core business, saying "A cable company can get into the telephone business a heck of a lot easier than a telephone company can get into video."[14]

Ironically, *Levin has protested the FCC's new cable rate regulations, saying "The new regulations are the most absurd thing ever seen. The intention was to get a few bad actors, not the entire industry."*[15] ***Yet, Time Warner's representatives have***

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[12]April 12 PCS Roundtable Transcript at 14.

[13]*See The 100 Largest Diversified Service Companies*, Fortune, May 30, 1994, at p.200.

[14]Kevin Maney, *Cable 'brings the future home'/Rate Cuts Drive Quest for Quick Cash*, USA Today, May 26 1994, at p.1B.

[15]Joe Flint, *Levin Ready to Race Telcos on Infopike*, Daily Variety, May 24, 1994, at p.47.

consistently advocated restrictions upon the entire cellular industry -- without any rational justifications.

Levin has also argued that, at least with respect to the cable business, "it is time for the government to step aside and let the marketplace take over. 'We have the Justice Department, the Federal Trade Commission and antitrust laws; let this industry proceed.'"[16]

This last observation is a fair proposal -- *with respect to the PCS marketplace*. The Commission should recognize that ***there is no market failure in the wireless marketplace justifying such anticompetitive restrictions as Time Warner proposes,*** and it should structure its rules so potential PCS providers compete in the marketplace and not in the hearing room.

If Time Warner, PCS Action, MCI, the Washington Post/American Personal Communications and Cox Cable are successful in their effort to have the FCC auction only a handful of mega-sized spectrum blocks, only deep pocket players will be able to bid. The current FCC assignment of 10 MHz blocks would be eliminated as would the opportunities they present for small businesses.

As CTIA previously noted in this proceeding, it is ironic that those most critical of the competitiveness of the cellular industry advocate a PCS duopoly as a competitive solution, complete with attempts to carve out a unique market via ever-larger geographic markets (from MTAs to the prospective nationwide licenses suggested by MCI and Time Warner Telecommunications), fix market share, and erect barriers to entry.[17]

PCS Action's proposed cellular-specific spectrum cap constitutes a request for the establishment of permanent market share, through allocation of fixed capacity. PCS Action would permanently sacrifice spectrum efficiency and the public interest by limiting the number and identity of competitors in the marketplace, and by erecting barriers to change.

How Much Spectrum Is Enough -- And How Do PCS Providers Get It?

As CTIA and other parties have already demonstrated, *the arguments of Time Warner, MCI and PCS Action for minimum allocations of 40 or 50 MHz, and nationwide (or at least MTA-sized) geographic markets, are predicated on entirely false*

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[16] *Id.*

[17] *See* Letter from Randall S. Coleman, CTIA, to Ralph A. Haller, FCC, dated April 22, 1994, GEN Docket No. 90-314, re April 11-12, 1994 Roundtable Discussions and *Response to En Banc Meeting on PCS Issues* attached thereto.

assertions that such blocks are necessary to accommodate existing microwave incumbents, move quickly to market, and to lower the number of cell sites and thereby reduce the capital investment required for the PCS infrastructure.[18]

Such blocks *do* offer the winning bidder reductions in competition, but *do not* alter their coordination or relocation requirements.[19] This is a prescription for PCS "on the cheap" -- and one which promises to limit new service applications.

It is ironic that Lex Felker of Time Warner Telecommunications has concluded that the 10 MHz and 20 MHz blocks are "potentially unusable," and that "at a minimum we've got to have at least 30 MHz and hopefully 40 MHz assigned,"[20] yet PCS Action has suggested that cellular companies be capped at only one 10 MHz block.[21]

The truth of the matter is that we cannot be sure what size blocks are best suited to the various business plans which are being developed by the multitude of would-be PCS providers. However, equity requires that parity exist in the treatment of such potential PCS licensees.

Moreover, contrary to Time Warner's assertions, smaller blocks -- 10 MHz and 20 MHz blocks -- are not likely to be the source of high transaction costs as would 30 MHz or 40 MHz blocks. For example, if the Commission errs in establishing an ideal block size, it is easier for the market to correct the matter by aggregating up to some appropriate figure, than it is to try to correct an overly-large award.

The market is *not* a remedy for such overly-generous grants, and government

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[18]*See* CTIA Response to En Banc Meeting on PCS Issues. *See also* Letter from Randall S. Coleman, CTIA, to Ralph A. Haller, FCC, dated April 22, 1994, GEN Docket No. 90-314, responding to March 24, 1994 presentation of PCS Action by noting the technical flaws in and contradictions between the pioneer preference and PCS submissions of PCS Action's members. *See also* Letter from Gary M. Epstein, Bell Atlantic Personal Communications, to Chairman James H. Quello, dated September 14, 1993, GEN Docket No. 90-314, and *A Critique of LCC's Preliminary Analysis of the Differences between 800 MHz and 1800 MHz Wireless Telecommunications Systems,* by Dr. Charles L. Jackson and Professor Raymond L. Pickholtz, attached thereto, refuting Time Warner's study purporting to show that a PCS system requires 50 MHz to be technically comparable to cellular.

[19]*See* Letters from Randall S. Coleman, CTIA, to William F. Caton, Secretary,FCC, dated May 3 and May 4, 1994, GEN Docket No. 90-314, and technical presentation materials attached thereto, used in ex parte presentations with Chairman Hundt, Commissioner Quello, and Commissioner Barrett on May 3 and May 4.

[20]April 12 PCS Roundtable Transcript at 68.

[21]*See* Letter from Ronald Plesser, PCS Action, to William Caton, Secretary, FCC, dated May 27, 1994, GEN Docket No. 90-314, at p.4.

recapture of the spectrum resource is fraught with difficulty, as was demonstrated by the SMR channel reclaiming process in the mid- to late-1980s.

In fact, ***PCS Action's proposal that disaggregation be prohibited will make it impossible for the market to correct creation of an overly-large award*** -- and makes nonsense of the assertions made by Time Warner's expert witnesses that a disaggregation strategy offers more benefits than CTIA's building block approach.

It is wiser to adopt realistic building blocks, which are both viable in themselves and susceptible to aggregation, than it is to award 30 MHz or 40 MHz (or 50 MHz!) blocks in the name of creating viable competition, avoiding interference, and obtaining financing -- since the reasons advanced by Time Warner's and PCS Action's advocates shift from one meeting or filing to the next, with the one constant being preservation of the blockbuster nature of the allocation.

In effect, ***PCS Action and its members are requesting a permanent allocation of market share.*** As microwave transition and relocation (or partnering) occurs, and PCS spectrum is cleared, pure PCS licensees will obtain a permanent capacity advantage, owing both to the pure digital nature of their technology, and the greater amount of bandwidth they possess. (Moreover, the assertions of PCS Action that the PCS spectrum is both encumbered, and costly to clear, ignore the evidence which the pioneer preference winners' have submitted in their PCS plans, and the evidence submitted by CTIA over the past month regarding spectrum equivalence, capacity and clearing.[22])

We must not lose sight of the fact that the PCS spectrum will ultimately be cleared -- at the discretion of the licensee -- and that the costs of clearing it will be borne by all licensees.

It is true that existing cellular carriers possess 25 MHz of spectrum. Contrary to PCS Action's assertions, this "clear spectrum" is already dedicated to serving over 16 million largely analog cellular customers. The FCC's own rules require such carriers to maintain the ability to provide analog service to home-region and roaming customers who use analog or dual-mode equipment. Of cellular's 25 MHz, at least 10 MHz must be retained in order to provide such analog service. Thus, at most, cellular carriers may convert 15 MHz of their existing allocation to providing "PCS-like" services.

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[22] *See* CTIA Response to En Banc Meeting on PCS Issues. *See also* Letter from Randall S. Coleman, CTIA, to Ralph A. Haller, FCC, dated April 22, 1994, GEN Docket No. 90-314, responding to March 24, 1994 presentation of PCS Action. *See also* Letters from Randall S. Coleman, CTIA, to William F. Caton, Secretary, FCC, dated May 3 and May 4, 1994, GEN Docket No. 90-314, transmitting technical presentation materials.